

**LOUDOUN COUNTY BOARD OF SUPERVISORS
ACTION ITEM
BOARD MEMBER INITIATIVE**

SUBJECT: Forward of draft language for CPAM 2005-0004, Eminent Domain and Protection of Existing Communities, to the Planning Commission for Public Hearing and Consideration.

INITIATED BY: Mick Staton

Reviewed by Staff: No

On July 19, 2005, the Board of Supervisors voted 8-1 to initiate a Comprehensive Plan Amendment designed to: 1. Add policy language that disapproves of the use of eminent domain for economic development purposes; 2. Remove language from the Comprehensive Plan that calls for the redevelopment of established communities, and; 3. Remove language from the Comprehensive Plan that calls for the development of a Town Center in each of the four suburban policy areas.

At the time of the vote, action to be taken on the amendment was subject to an update on CPAM's already underway and waiting to be processed. Since that time, the Board has dealt with the Rural CPAM and down-zoning, the Arcola/Route 50 CPAM, the Dulles South CPAM, the Crosstrails CPAM, and a host of other initiatives, including a first attempt at the PUGAMP.

Supervisor Staton has drafted proposed amendments to the Comprehensive Plan that would fulfill the intent of CPAM 2005-0004, and is asking the Board to forward those proposed amendments to the Planning Commission for a Public Hearing and action so that the Board may take final action on this CPAM. Staff resources for this effort would be minimal, and final action could take place in three to four months.

MOTION: I move that the Board of Supervisors forward the attached draft amendments for CPAM 2005-0004 to the Planning Commission for a public hearing no later than their May public hearing.

ATTACHMENTS:

1. Proposed draft amendments to the Comprehensive Plan for CPAM 2005-0004
2. Memo from County Staff to Supervisor Staton regarding CPAM 2005-0004
3. Selected Minutes from the July 19th, 2005 Board of Supervisors Meeting
4. Copy of the July 19th, 2005 Board Business meeting Action Item

PROPOSED POLICY LANGUAGE FOR CPAM 2005-0004

1. Eminent Domain

a. Chapter 4 (Page 4-10):

Add policy statement #16: "Loudoun County will not exercise the power of eminent domain for economic development purposes."

b. Chapter 6 Suburban Policy Area (Page 6-16) Infill, Revitalization and Redevelopment:

Add policy statement #14: "Loudoun County will not exercise the power of eminent domain for economic development purposes."

2. Protection of Existing Communities

a. Chapter 2, Planning Approach (Page 2-6) Suburban Policy Area – 2nd Paragraph:

Original text: "As existing neighborhoods mature, redevelopment and revitalization plans will be developed to ensure the continuing vitality of these areas."

Proposed text: "As existing neighborhoods mature, revitalization plans will be developed to protect and preserve these established communities."

b. Chapter 2, Planning Approach (Page 2-6) Suburban Policy Area – 3rd Paragraph:

Delete: "Downtowns in each of the four communities will be considered as part of the redevelopment strategy to be detailed in the community plan process."

c. Chapter 6, Suburban Policy Area (Page 6-2) Land Use Pattern and Design 3rd Paragraph:

Original text: "(3) revitalizing and redeveloping the aging areas in the Suburban Policy Area."

Proposed text: "(3) revitalizing existing neighborhoods in a way that protects and preserves our existing communities."

d. Chapter 6, Suburban Policy Area (Page 6-15) Infill, Revitalization, and Redevelopment, Policy 2:

Existing Language: "Redevelopment of existing uses will be based on the availability of adequate facilities, transportation facilities, and infrastructure. The County desires the assemblage of small, adjacent under-utilized sites to achieve a consistent and compatible development pattern."

Proposed Language: "Redevelopment of existing uses will be based on the availability of adequate facilities, transportation facilities, and infrastructure. The County desires the assemblage of small, adjacent under-utilized sites to achieve a consistent and compatible development pattern. Established residential communities will be protected and preserved through revitalization plans."

e. Chapter 6, Suburban Policy Area (Page 6-16) Infill, Revitalization, and Redevelopment, Policy 12:

Existing Language: "The County will provide incentives and resources for the redevelopment and revitalization of developed areas within the four communities to retrofit neighborhoods to be pedestrian/bicycle oriented; to institute traffic calming, street lighting, and sidewalks; and to convert inefficient retail and commercial development."

Proposed Language: "The County will provide incentives and resources for the revitalization of established neighborhoods within the four communities to preserve the quality of life in these areas, and to convert inefficient retail and commercial development."

3. Development of a Town Center in each of the four suburban policy areas.

a. Chapter 6, Suburban Policy Area (Page 6-7) Policy 13:

Existing Language: "There will be four (4) Town Centers, one (1) Transit-Oriented Development (TOD), one (1) Transit-Related Employment Center (TREC), and one (1) Urban Center in the Suburban Policy Area."

Proposed Language: "There will be one (1) Transit-Oriented Development (TOD), one (1) Transit-Related Employment Center (TREC), and one (1) Urban Center in the Suburban Policy Area. Town Centers will be considered for development west of Route 28 in the Suburban Policy Area."

b. Chapter 6, Suburban Policy Area (Page 6-8) bullet #2:

Existing Language: "Each community will have a recognized Town Center, provide a full range of housing types, and provide for a diverse, stimulating social, cultural, recreational, and spiritual environment."

Proposed Language: "Communities west of Route 28 will have a recognized Town Center. All communities will provide a full range of housing types and provide for a diverse, stimulating social, cultural, recreational, and spiritual environment."

c. Chapter 6, Suburban Policy Area (Page 6-12) 2nd Paragraph:

Delete: "The County will identify future transit areas as Town Centers in each of the four communities during the Community Plan process. These areas may be targeted for redevelopment to facilitate transit, such as bus."

d. Chapter 6, Suburban Policy Area (Page 6-15) 3rd Paragraph:

Delete: "Although much of the Suburban Policy Area has been developed, this area will continue to evolve. The County envisions redevelopment to concentrate diversity into four Town Centers within the four distinct communities. This type of redevelopment might be considered "vertical" development. As the second wave of development occurs, the County will encourage new growth into the compact Town Centers of the four communities. These downtown areas will be identified in the Community Plan process."

e. Chapter 6, Suburban Policy Area (Page 6-15) Infill, Revitalization, and Redevelopment, Policy 7:

Existing Language: "Higher density development as defined in the Revised General Plan will occur as redevelopment in the Suburban Policy Area in the Transit-Oriented Development, Urban Center, and in the Town Centers, or "community cores," of the four communities. These areas will have the highest densities in the Suburban Policy Area. The Town Centers will be identified during the Community Planning process."

Proposed Language: "Higher density development as defined in the Revised General Plan will occur as redevelopment in the Suburban Policy Area in the Transit-Oriented Development, Urban Center, and in the Town Centers, or "community cores," of the communities west of Route 28. These areas will have the highest densities in the Suburban Policy Area. The Town Centers will be identified during the Community Planning process."

f. Chapter 6, Suburban Policy Area, Land Use Categories, A. Residential, 3. Town Centers, (Page 6-19) Text:

Existing Language: "The Plan envisions that each of the four larger communities will have one Town Center."

Proposed Language: "The Plan envisions that the larger communities west of Route 28 will each have one Town Center."

g. Chapter 6, Suburban Policy Area, Land Use Categories, A. Residential, 3. Town Centers, (Page 6-19) Policy 1:

Existing Language: "A Town Center functions as the "downtown" of each community with a mix of residential and business uses in a compact setting. Each of the four communities will have a Town Center, the location of which will be determined in the Community Plan process."

Proposed Language: "A Town Center functions as the "downtown" of each community with a mix of residential and business uses in a compact setting. The communities west of Route 28 will have a Town Center, the location of which will be determined in the Community Plan process."

g. Chapter 11, Implementation, Design Guidelines, B. Suburban Community Design Guidelines (Page 11-5) Text:

Existing Language: "This plan strongly endorses the development of four distinctive communities that include a mixed-use town center surrounded by residential neighborhoods and areas of natural open space to promote a sense of community..."

Proposed Language: "This plan strongly endorses the development of distinctive communities. For the communities west of Route 28, this will include a mixed-use town center surrounded by residential neighborhoods and areas of natural open space to promote a sense of community..."

h. Chapter 11, Implementation, Design Guidelines, Community Form, 3. Town Centers, a. Function (Page 11-10):

Existing Language: "Four Town Centers will serve as the downtown of each of the four Suburban Policy Area communities."

Proposed Language: "Town Centers will serve as the downtown of the Suburban Policy Area communities west of Route 28."

i. Glossary, (Page G-11). Town Center:

Existing Language: "A mixed-use, concentrated community core, which will serve as a downtown for each of the four Suburban communities."

Proposed Language: "A mixed-use, concentrated community core, which will serve as a downtown for the Suburban communities west of Route 28."

County of Loudoun
Department of Planning
MEMORANDUM

DATE: February 26, 2007

TO: Mick Staton, Sugarland Run District Supervisor
Loudoun County Board of Supervisors

FROM: Julie Pastor, Director of Planning

THROUGH: Linda Neri, Deputy County Administrator

SUBJECT: CPAM 2005-0004, Eminent Domain

Per your discussion with staff, the following is an outline of policies in the Revised General Plan (Plan) that could be affected with the CPAM that has been initiated related to Eminent Domain/Redevelopment policies (CPAM 2005-0004, Eminent Domain). The following are the parameters envisioned for this CPAM:

1. Add policy language that would prevent the use of eminent domain for economic development purposes; and,
2. Remove language from the Comprehensive Plan that calls for the redevelopment of established communities, and remove language that calls for a Town Center in each of the four Suburban Policy Areas.

The following could be appropriate locations to add policy language that would prevent the use of eminent domain for economic development purposes:

1) Economic Development is addressed in Chapter 4 of the Plan. Eminent domain policy language could be added as Policy 16, p. 4-10 (Policy 15 was added through CPAM 2004-0034, Location of RC Zoning Districts). Input from the Loudoun County Economic Development Commission (EDC) may want to be considered when amending economic development policies, as the EDC outlined the four key economic development principles for the County in the Plan (Revised General Plan, Loudoun's Economic Development Strategy, p. 4-2). Language added to the Plan could read, "Loudoun County will not exercise the power of eminent domain solely for economic development purposes."

2) The "Infill, Revitalization, and Redevelopment" section in Chapter 6, Suburban Policy Area, page 6-12 could also be an appropriate location for adding language to the plan that prevents the use of eminent domain for economic development purposes.

The following is language in the Plan that makes reference to redevelopment of established communities:

- Chapter 6, Suburban Policy Area, text, p. 6-2 (second column). "The County's vision for the Suburban Policy Area is that the four large communities increase in quality and become more distinct places. Policies below address ways to improved livability through...(3) revitalizing and redeveloping the aging areas in the Suburban Policy Area.
- Chapter 6, Suburban Policy Area, Land Use Pattern and Design, F. Infill, Revitalization, and Redevelopment:
 - Page 6-15, Policy 2. "Redevelopment of existing uses will be based on the availability of adequate facilities, transportation facilities, and infrastructure. The County desires the assemblage of small, adjacent under-utilized sites to achieve a consistent and compatible development pattern.
 - Page 6-16, Policy 11. "The County will direct public investment and resources and give priority to the redevelopment and enhancement of existing infrastructure, capital facilities, and services. The County will also implement an incentive program for redevelopment of the above.
 - Page 6-16, Policy 12. "The County will provide incentives and resources for the redevelopment and revitalization of developed areas within the four communities to retrofit neighborhoods to be pedestrian/bicycle oriented; to institute traffic calming, street lighting, and sidewalks; and to convert inefficient retail and commercial development.

The following is language in the Plan that makes reference to a Town Center in each of the four larger communities of the Suburban Policy Area:

- Chapter 6, Suburban Policy Area, Policy 13, p. 6-7. "There will be four (4) Town Centers, one (1) Transit – Oriented Development (TOD), one (1) Transit-Related Employment Center (TREC), and one (1) Urban Center in the Suburban Policy Area."
- Chapter 6, Suburban Policy Area, text, p. 6-8 (bullet 2). "Each community will have a recognized Town Center, provide a full range of housing types,

and provide for a diverse, stimulating social, cultural, recreational, and spiritual environment."

- Chapter 6, Suburban Policy Area, Infill, Redevelopment, Revitalization Development Policies, Policy 7, p. 6-15. "Higher density development as defined in the Revised General Plan will occur as redevelopment in the Suburban Policy Area in the Transit-Oriented Development, Urban Center, and in the Town Centers, or "community cores", of the four communities. These areas will have the highest densities in the Suburban Policy Area. The Town Centers will be identified during the Community Plan process."
- Chapter 6, Suburban Policy Area, Land Use Categories, A. Residential, 3. Town Centers, p. 6-19:
 - Page 6-19, text. "The Plan envisions that each of the four larger communities will have one Town Center."
 - Page 6-19, Policy 1. "A Town Center functions as the "downtown" of each community with a mix of residential and business uses in a compact setting. Each of the four communities will have a Town Center, the location of which will be determined in the Community Plan process."
- Chapter 11, Implementation, Design Guidelines, B. Suburban Community Design Guidelines, text, p. 11-5). "This Plan strongly endorses the development of four distinctive communities that include a mixed-use town center surrounded by residential neighborhoods and areas of natural open space to promote a sense of community..."
- Chapter 11, Implementation, Design Guidelines, Community Form, 3. Town Centers, a. Function, p. 11-10. "Four Town Centers will serve as the downtown of each of the four Suburban Policy Area communities."
- Glossary, p. G-11. "Town Center: A mixed-use, concentrated community core, which will serve as a downtown for each of the four Suburban Communities."

Any additions and/or refinements to the "Town Center" section of the Plan would likely be drafted to allow flexibility through the community planning process to define and identify the opportunity for Town Centers where they are still desired.

Staff looks forward to direction from the Board of Supervisors on the timing and schedule for proceeding with this CPAM.

cc: Cynthia L. Keegan, AICP, Program Manager, Community Planning
Melanie L. Wellman, Planner, Community Planning

M I N U T E S

LOUDOUN COUNTY BOARD OF SUPERVISORS

JULY 19, 2005

At a business meeting of the Board of Supervisors of Loudoun County, Virginia, held at the County Government Center in the Board of Supervisors' Meeting Room, 1 Harrison Street, SE, Leesburg, Virginia on Tuesday, July 19, 2005, at 9:30 a.m.

PRESENT: Scott K. York, Chairman
Bruce E. Tulloch, Vice Chairman
James G. Burton
James E. Clem
Eugene A. Delgaudio
Sally Kurtz
Stephen J. Snow
Mick Staton Jr.
Lori L. Waters

IN RE: RESOLUTION AGAINST THE USE OF EMINENT DOMAIN FOR ECONOMIC DEVELOPMENT PURPOSES / CPAM TO ADD POLICY AGAINST USING EMINENT DOMAIN FOR ECONOMIC DEVELOPMENT PURPOSES AND OTHER PURPOSES / REQUEST OF AN ATTORNEY GENERAL OPINION ON WHETHER LOUDOUN COUNTY MAY PASS AN ORDINANCE RESTRICTING ITSELF FROM USING A POWER GRANTED TO THEM BY THE GENERAL ASSEMBLY

Supervisor Staton moved to approve the resolution opposing the use of eminent domain for economic development purposes.

Supervisor Staton further moved that the Board of Supervisors initiate a Comprehensive Plan Amendment that will add policy language that disapproves of the use of eminent domain for economic development purposes, and to remove language from the Comprehensive Plan that calls for the redevelopment of ~~older~~ established communities, and language that calls for a Town Center in each of the four

Suburban Policy Areas. The timing of this amendment would be determined when the board receives and update on the CPAM's underway and to be processed. Seconded by Vice Chairman Tulloch.

Supervisor Burton separated the motion by dividing the second motion into two parts.

Supervisor Staton's first part of the motion passed 9-0.

Several Board members commented on the second part of the 2nd motion. Supervisor Staton accepted Chairman York's friendly amendment to change the word "older" to "established."

Supervisor Staton's second part of the 2nd motion referencing removal of language from the Comprehensive Plan also passed 8-1, Supervisor Burton voted no.

Date of Meeting: July 5, 2005

Attachment 4, Page 1
~~Page 1 of 3~~

Date of Meeting: July 19, 2005

#15

**LOUDOUN COUNTY BOARD OF SUPERVISORS
ACTION ITEM
BOARD MEMBER INITIATIVE**

SUBJECT: A. Resolution against the use of eminent domain for Economic Development purposes.
B. CPAM to add policy against using eminent domain for economic Development purposes and other Purposes
C. Request for an Attorney General opinion on whether Loudoun County may pass an ordinance restricting itself from using a power granted to them by the General Assembly

INITIATED BY: Mick Staton

Reviewed by Staff:

Yes _____
No X

BACKGROUND:

On June 23rd, the United States Supreme Court issued a ruling in the case of Kelo v. New London that grants local governments the broad power to take private property and turn it over to another private interest for the purposes of economic development. This ruling presents a serious threat to the concept of private property.

At the July 5th meeting, Supervisor Staton presented an item to the Board seeking approval to adopt a local ordinance that would prohibit Loudoun County from using the power of eminent domain for economic development purposes. The County Attorney opined that Loudoun County could not pass an ordinance of this nature, but could adopt a policy stating the Boards intention not to exercise this power. It was recommended that a resolution be brought to the next meeting that would declare the Boards opposition to using eminent domain for this purpose and to request that the General Assembly pass legislation that would limit the definition of 'public use' to exclude economic development purposes.

Upon further consideration of the issue, Supervisor Staton is asking his colleagues for a three phased approach. First, a resolution has been prepared opposing the recent Supreme Court ruling and asking the General Assembly to limit the definition of a 'public use.'

Second, Supervisor Staton is requesting support for an Attorney General's opinion on whether or not a locality may adopt an ordinance that voluntarily limits itself from using a power granted to it by the General Assembly. Supervisor Staton believes that while the Dillon rule prohibits a locality from exercising powers that have not been specifically granted them by the General Assembly, it is not clear whether or not a locality may limit its own authority.

Date of Meeting: July 5, 2005

Third, Supervisor Staton wants to initiate a Comprehensive Plan Amendment for two purposes. The first purpose is to add policy language stating that Loudoun County will not use eminent domain for economic development purposes. The second related issue is to remove language from the Comprehensive Plan that calls for the redevelopment of older communities, as well as language that calls for the establishment of a Town Center in each of the four Suburban Policy areas.

The Kelo decision was found in favor of the Government in large part because "the takings at issue here would be executed pursuant to a carefully considered development plan." (quote taken from Kelo v. New London decision)

The Potomac Suburban area, which includes the Sugarland Run District, is built out, and any plans to develop a Town Center in this planning sub-area would require the redevelopment of an older community, most likely the Sugarland Run community. Supervisor Staton wants to remove this language from the Comprehensive Plan so that future Boards and planners will not have plan backing to support a redevelopment of this area to a higher density use.

MOTIONS:

1. I move that the Board of Supervisors approve the attached resolution opposing the use of eminent domain for economic development purposes.
2. I move that the Board of Supervisors request an opinion of the Attorney General on whether a locality may adopt an ordinance that would create limits to its authority that are stricter than what the General Assembly will permit.
3. I move that the Board of Supervisors initiate a Comprehensive Plan Amendment that will add policy language that disapproves of the use of eminent domain for economic development purposes, and to remove language from the Comprehensive Plan that calls for the redevelopment of older communities, and language that calls for a Town Center in each of the four Suburban Policy Areas. The timing of this amendment would be determined when the board receives and update on the CPAM's underway and to be processed.

ATTACHMENTS:

- 1) Resolution opposing the use of eminent domain for economic development purposes.
- 2) Key pages from the Revised General Plan
- 3) Excerpt from the US Supreme Court Decision in Kelo v. New London

Resolution in Opposition to the Use of Eminent Domain for Economic Development Purposes

WHEREAS on June 23rd, the United States Supreme Court issued a ruling in the case of Kelo v. New London that grants local governments the broad power to take private property and turn it over to another private interest for the purposes of economic development, and

WHEREAS this ruling broadens the concept of public use to include taking property from one private landowner and giving it to another private landowner for a private sector use, and

WHEREAS the Loudoun County Board of Supervisors recognizes and respects the private property rights of all its citizens, and

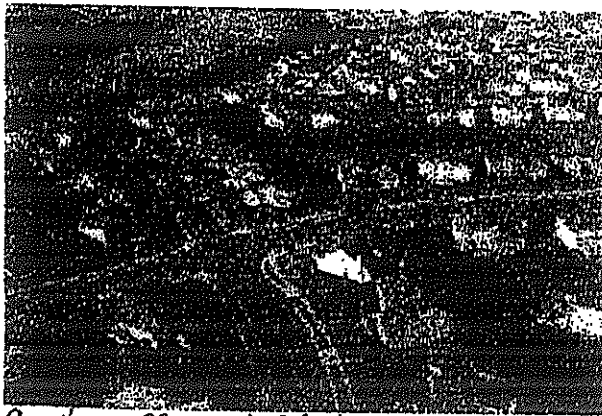
WHEREAS this ruling represents a serious threat to the concept of private property,

NOW, THEREFORE BE IT RESOLVED That the Loudoun County Board of Supervisors opposes the ruling of the United States Supreme Court in the matter of Kelo v. New London, and pledges not to use the power of eminent domain for economic development purposes.

BE IT FURTHER RESOLVED that the Loudoun County Board of Supervisors requests its representatives in the General Assembly to introduce and support legislation that will limit the definition of 'public use' to exclude economic development.

Chapter 2 Planning Approach

The strategy for residential densities is to start with higher densities around transit nodes and urban centers in the Suburban Policy Area, moving to lower clustered suburban densities in the Transition Policy Area and then to still lower rural by right densities in the Rural Policy Area. This approach provides an internally consistent density pattern that provides an appropriate location for all of the County's desired housing types, lot sizes, neighborhoods, and communities.



Over the next 20 years, the Suburban Policy Area will continue to build out in a pattern of residential neighborhoods, town centers, and regional business centers linked by a network of roads, linear parks, and open spaces.

to the Washington D.C. Metropolitan Region. The area will be characterized by a pattern of residential neighborhoods, town centers, and regional business centers linked by a substantial network of roads, linear parks, and open spaces. As existing neighborhoods mature, redevelopment and revitalization plans will be developed to ensure the continuing vitality of these areas. A "hard" utility edge (marking the limits of central sewer and water) is maintained by the western boundary of the Suburban Policy Area establishing an urban growth boundary.

As express bus (expected in 2004) and eventually bus rapid transit (expected in 2010) and rail become available, higher-density land uses along major thoroughfares will become appropriate. Transit nodes and urban centers including a mix of uses and transportation modes will develop. Very compact in form, they will be designed for full pedestrian access and served by mass transit. The first nodes will appear along the Dulles Greenway corridor, where right-of-way exists for a rail transit corridor, and in in-fill areas within existing developments. "Downtowns" in each of the four communities will be considered as part of the redevelopment strategy to be detailed in the Community Plan process.



Unpaved roads are an integral part of the Rural Policy Area's character, and maintaining this character is of paramount importance.

The Plan reaffirms an Urban Growth Boundary (UGB) beyond which central sewer and water is not allowed. Beginning in the north, the UGB follows the Suburban Policy Area boundary to the point where it joins with the western edge of the Lower Foley subarea. There is also a UGB that applies to the Towns. Where there are Town Joint Land Management Areas (JLMAs) the boundaries of the JLMA serve as the UGB.

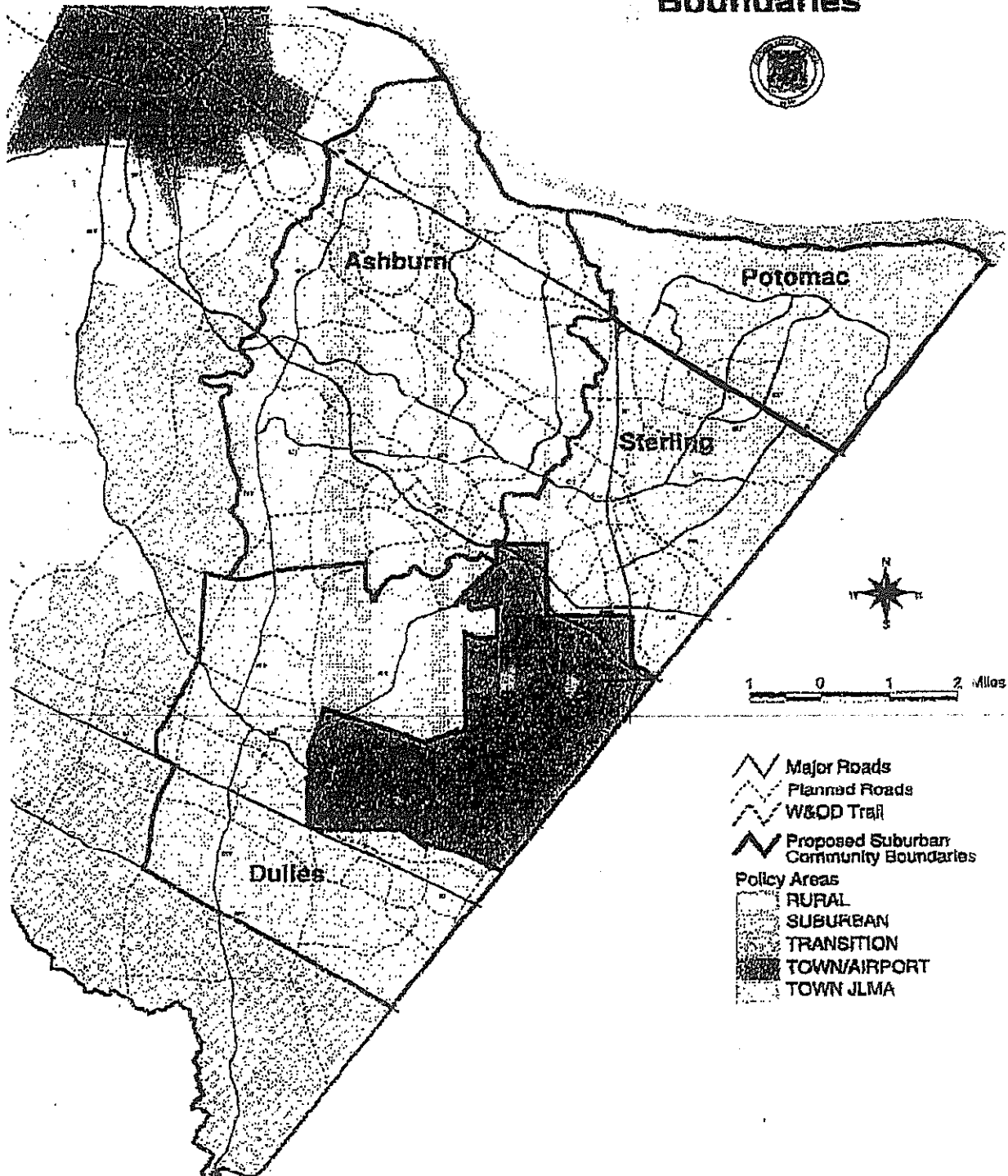
a. Suburban Policy Area

Eastern Loudoun is the Suburban Policy Area. The Plan identifies four large communities: Ashburn, Dulles, Potomac, and Sterling. Each will be the subject of individual Community Plans to ensure that they are well designed and serviced and that they provide diverse and stimulating social, cultural, recreational and spiritual environments for their residents.

Over the next twenty years, it is anticipated that the Suburban Policy Area will continue to build out in a suburban pattern as a low-density fringe

Chapter 6 Suburban Policy Area

Suburban Community Boundaries



Revised General Plan

Chapter 6 Suburban Policy Area

- The eastern portion of the Leesburg Joint Land Management Area west of Goose Creek.

Land Use Pattern and Design

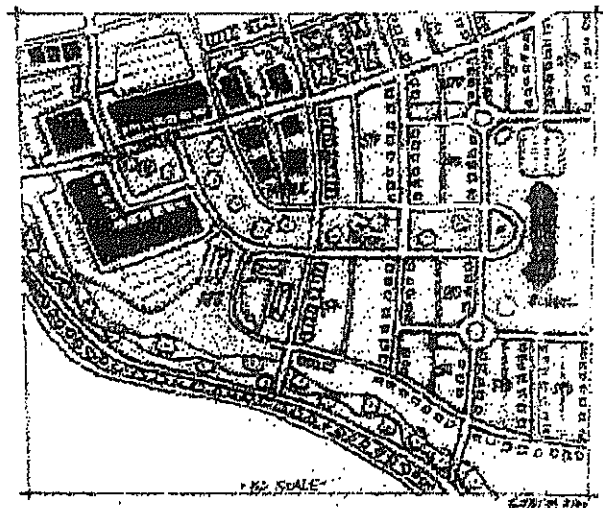
As the primary location for suburban-scale residential and nonresidential development, the manner of growth and redevelopment in the Suburban Policy Area is of vital importance. The Plan anticipates that there will be four distinct communities within the Suburban Policy Area, separated from one another by associated Green Infrastructure components and major roads. The Plan introduces the concept of Community Plans that will guide the remaining build-out of Ashburn, Dulles, Potomac, and Sterling. The County's goal is that the principles of Smart Growth and revitalization will guide the build-out and revitalization of the Suburban Policy Area through the detailed planning of the four communities. All future development applications in the policy area will be reviewed in the context of the four large communities: Ashburn, Dulles, Potomac, and Sterling. The four communities' boundaries are as follows (see Suburban Community Boundaries Map, pg. 6-5):

- The Ashburn Community stretches from the Potomac River north of Lansdowne and south of the Broad Run watershed boundary near Red Hill Road, and to the west extends along the Goose Creek and Beaverdam Reservoir.
- The Dulles Community is bounded on the north by the Broad Run watershed boundary, on the south by Braddock Road, on the east by the Fairfax County line, and on the west by the relocated Route 659.
- The Potomac Community includes the area north of Route 7 to the Potomac River between the Fairfax County line and the Broad Run.
- The Sterling Community includes the area from the Washington Dulles International Airport north to Route 7 between the Fairfax County line and the Broad Run.

As each new development is absorbed into the Suburban Policy Area's built environment, it is important that it is viewed in the context of its larger community. New residential and non-residential projects should have a mix of complementary land uses and project designs that ensure the long-term sustainability, or environmental and economic health, of both the individual development and the broader community. In addition, the County seeks to

answer the transit needs of the Suburban Policy Area along with its growing need for revitalization and redevelopment.

The County's vision for the Suburban Policy Area is that the four large communities increase in quality and become more distinct places. Policies below address ways to improve livability through (1) protecting and recapturing elements of the Green Infrastructure, including open space; (2) ensuring compatible and complementary infill development; and (3) revitalizing and redeveloping the aging areas in the Suburban Policy Area.



Hand rendering of a walkable mixed-use suburban development.

All development and redevelopment, both residential and non-residential, will implement a conservation design approach. Conservation design places a priority on preserving both sensitive environmental and man-made elements of a site. Site development will take place around these elements, incorporating them into the design.

Land Use Pattern and Design Policies

1. The County's vision for the Suburban Policy Area is self-sustaining communities that offer a mix of residential, commercial, and employment uses; a full complement of public services and facilities; amenities that support a high quality of life; and a design that conforms to the County's Green Infrastructure and incorporates Conservation Design.

Chapter 6 Suburban Policy Area

2. Suburban Policy Area communities will be developed as efficient, compact, mixed-use and pedestrian-oriented communities with a range of residential lot sizes, in accordance with the community design policies of this Plan, will provide a measurable standard open space (active, passive, and natural) as specified in the land use matrix, and will fully integrate the County's Green Infrastructure.
3. The County, in collaboration with other governmental agencies and the private sector, will ensure through a variety of measures that all public spaces in residential and commercial areas are pedestrian friendly. These measures may include the construction, improvement, and maintenance of public squares, parks, and pedestrian malls, and the attention to street design details such as landscaping, lighting, and provision of attractive street furniture.
4. The County will develop four Community Plans that will provide for the development of the Suburban Policy Area. The four communities are Sterling, Potomac, Dulles, and Ashburn, as shown on the Suburban Community Boundaries Map.
5. All new development proposals in the Suburban Policy Area will be designed using the "conservation design" approach as detailed in the *Revised General Plan*.
6. The development phasing plan for a mixed-use project will establish a build-out relationship between the residential and non-residential components of the project that is consistent with the County's goals for the project area.
7. Alterations to approved land use projects will conform to the land use and design goals and policies of the *Revised General Plan*.
8. For properties up to 50 acres outside of Keynote Employment designations, the land use mix attributed to the various land uses may not be achievable due to the small size of the parcel. In such cases, an applicant for rezoning may vary from the land use mix specified in the Plan by showing that an alternative is more appropriate to the specific site. This can be accomplished by providing the County with a survey of land uses within a 1,500-foot radius of the site.
9. Development proposals proceeding through the legislative and site planning process will conform to the County's community design guidelines. The design guidelines will be implemented as a part of legislative applications (e.g., rezonings and special exceptions) and incorporated into regulatory documents such as the Zoning Ordinance, Facilities Standards Manual (FSM), and Land Subdivision and Development Ordinance (LSDO) where applicable.
10. To protect and enhance the historic character and cultural importance of the historically significant areas in the Suburban Area, the County shall work with the local communities towards the designation of County Historic and Cultural Conservation Districts. Other historically significant areas within the Suburban Area shall be identified and protected/enhanced. Pedestrian access to and from existing and future neighboring residential communities also shall be encouraged for any new development.
11. The County will discourage strip development of any type and accordingly will develop zoning performance standards to discourage this pattern of development.
12. The County will pursue state enabling legislation for the establishment of a Transfer of Development Rights (TDR) Program within suburban communities to assist in the development of open space.
13. There will be four (4) Town Centers, one (1) Transit-Oriented Development (TOD), one (1) Transit-Related Employment Center (TREC), and one (1) Urban Center in the Suburban Policy Area.
14. Undeveloped or minimally developed parcels shown on the Land Use Map for non-residential uses but zoned residential will be remapped to a corresponding non-residential district. Likewise, undeveloped or minimally developed parcels shown on the Land Use Map for residential uses, will be remapped to a density of 1.0 dwelling units per acre, if not currently zoned at a higher density.

A. Four Distinct Communities

The County recognizes that the Suburban Policy Area comprises four distinct communities that are separated from one-another by components of the Green Infrastructure and by major roads. As a priority, the

Chapter 6 Suburban Policy Area

County will work with residents and business leaders to develop individual, detailed Community Plans to address particular needs and that will guide the build-out of each of these communities during the next twenty years. Different detailed planning approaches will be required because of the differences in the development of the four communities. For example, revitalization and redevelopment may be emphasized in the Sterling and Potomac Communities, while the Ashburn and Dulles communities continue to develop through new projects.

The Community Plans will be official elements of the County's Comprehensive Plan and will provide policy guidance to achieve the following objectives:

- The communities will be distinct, separated by greenways or natural buffers, as well as major road corridors and will protect sensitive environmental areas.
- Each community will have a recognized Town Center, provide a full range of housing types, and provide for a diverse, stimulating social, cultural, recreational, and spiritual environment.
- The County will create a program for the revitalization of older neighborhoods that will provide incentives for new investment, upgrading of facilities, and adaptive reuse of non-residential structures.
- The communities will comply fully with the County's Green Infrastructure policies, meet the applicable standards for open space, and have a network of greenways and trails.
- The County's service levels and plans for all public facilities will be fully implemented with appropriate site locations.
- Necessary school facilities will be provided at conveniently located sites to meet the educational needs of the communities and to ensure that school clusters are consistent with community boundaries.
- The internal transportation systems will be efficient, safe, pedestrian-friendly, and provide for alternative modes of transportation.

Pending completion of the Community Plans, the *Revised General Plan's* policies related to incorporating infill parcels into these communities will apply.



Historic areas within the Suburban Policy Area such as Old Sterling will be protected (Galford Baptist Church shown).

Communities Policy

1. As part of the Community Plan process, the County will plan and implement a pedestrian and bikeway network to link the residential, employment, and transit station areas of the four Suburban Policy Area communities, and so far as possible, connect the system to those of adjoining jurisdictions.



Goose Creek forms the western boundary of the Suburban Policy Area.

B. Green Infrastructure

The Suburban Policy Area has a rich cultural heritage and is the site of important components of the County's Green Infrastructure. The County's strategy is to protect its existing elements and to recapture elements where possible. Existing elements of the Suburban Policy Area's Green Infrastructure include the following:

- An easement along the policy area's segment of Goose Creek, a state scenic river;

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safe, convenient, and environmentally sound transportation system for movement of people to and from the Suburban Policy Area as well as within it. The County's suburban transportation network is multi-modal: Routes 7, 28, 50, and 267 provide the backbone of the suburban road network; the W&OD Trail is the spine of the bicycle network; residential and commercial developments provide sidewalks and biking/walking trails to encourage biking and walking trips; and Bus Rapid Transit is expected to be implemented along the Dulles Greenway in the 2003/2004 timeframe with a conversion to rail service by 2010. These transportation networks link a variety of land uses. How the County plans communities will invariably affect transportation needs.

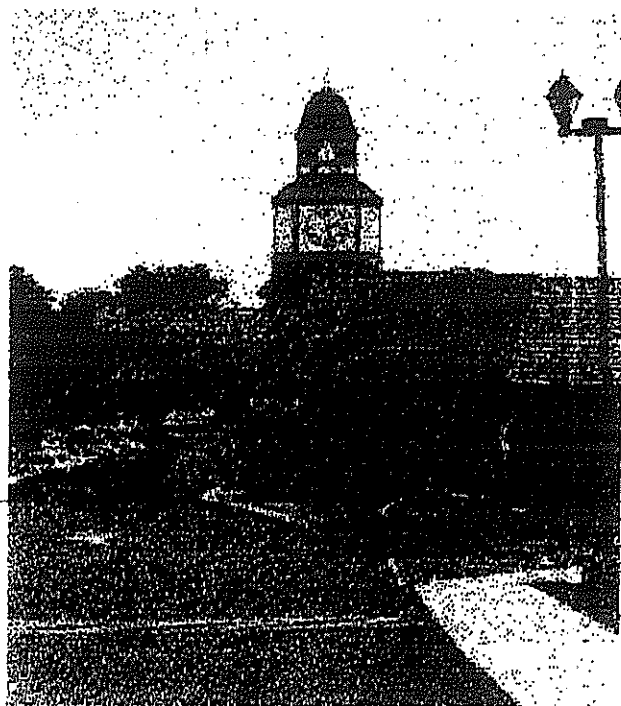
With the advent of transit, it is important that the County plan land uses accordingly. The County will identify future transit areas as Town Centers in each of the four communities during the Community Plan process. These areas may be targeted for redevelopment to facilitate transit, such as bus. In addition, mixed-use communities that provide pedestrian-scale environments promote walking and bicycling, which reduces automobile trips. The County will produce a bicycle and pedestrian network through a subsequent planning process for recreation and as a transportation alternative. This network should connect key centers of employment, commerce, service, and residential development. The County will continue to seek federal, state, and local funds to improve the existing transportation network -- to become truly multi-modal.

Suburban Transportation Policies

1. The Revised Countywide Transportation Plan (CTP) provides additional transportation policy direction for the transportation network in the Suburban Policy Area. The hierarchy of roads will be amended to reflect the scale and function of its associated land use.
2. The development of High-Density Residential Areas and Town Centers will be phased to achieve acceptable levels of transportation service through the available mix of transportation modes.
3. Residential, office, institutional, civic, and retail areas in the Suburban Policy Area (schools, universities, shopping centers, employment centers, parks, libraries, community centers, and other heavily visited public buildings) should have convenient access by foot and bicycle.

F. Infill, Revitalization, and Redevelopment

Due to its rapid development during the past two decades, the Suburban Policy Area should approach an initial build-out by 2020. The County anticipates that the majority of land use applications in this policy area will be for infill, revitalization, or redevelopment projects within established communities. Infill projects are key to completing larger community development patterns. Redevelopment and revitalization of aging or neglected areas of the Suburban Policy Area are essential to the general "health" of the area. An area's loss of vitality results in significant public costs due to abandonment of older public infrastructure and declining residential and non-residential property values.



Incentives and public investment will be provided for revitalization of developed areas.

Infill development is the establishment of a new land use on a site that may be undeveloped or underutilized but is located within an established, stable development where public facilities such as roads, water, sewer, and general services are available. A well-conceived strategy for the development of infill lots will help reduce the adverse impacts that result when two different land uses are adjacent to each other and allow uses complementary to those found on adjacent, developed sites. When infill development occurs between disparate uses, the site

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should be developed to blend in or transition between uses with ample setbacks and buffering. Factors to be considered in developing infill parcels include the size of the parcel relative to the sizes of adjacent parcels; site access as it relates to regional access; community open space and civic area needs; impacts on the site due to existing or planned regional transportation facilities; utility connections; and the relationship to surrounding land uses and the physical location of those uses on the adjacent sites.

The County will not allow the artificial creation of infill development parcels. A property owner will not be permitted to reserve part of a larger tract of land in order to take advantage of any land use intensity that may accrue to the small piece if it were considered at a later date for infill development. If that is attempted, the subordinate parcel will be developed as though it were part of the regional context, clearly relating in use and intensity to the land use pattern established by the development of the larger tract of which it was once a part.

Although much of the Suburban Policy Area has been developed, this area will continue to evolve. The County envisions redevelopment to concentrate density into four Town Centers within the four distinct communities. This type of redevelopment might be considered "vertical" development. As the second wave of development occurs, the County will encourage new growth into the compact Town Centers of the four communities. These downtown areas will be identified in the Community Plan process.

As developments age and community needs shift, revitalization is necessary in communities. Those needs will be identified and planned for in the Community Plan process. Needs might include open space, pedestrian or bicycle connections, traffic calming, stormwater management improvements, or other issues. In keeping with the intent of the *Revised General Plan*, the recapture of Green Infrastructure will be a priority in all redevelopment strategies.

Infill, Redevelopment, and Revitalization Development Policies

1. The County will evaluate proposed infill development applications during the legislative and/or regulatory process based on how the proposed use functions on the site relative to the established development pattern, rather than simply based on the use itself. Evaluation criteria established to determine the

relationship of surrounding uses with the proposed infill use will include the following:

- a. Size of the infill parcel relative to surrounding parcels;
 - b. Residential densities established on adjacent parcels;
 - c. Ability of the infill parcel to provide a compatible site design with or without buffering from the existing development pattern;
 - d. Amount of open space and impervious surface;
 - e. Use intensity;
 - f. Development pattern and scale;
 - g. Road and pedestrian network; and
 - h. Impact of noise and light generated on the site.
2. Redevelopment of existing uses will be based on the availability of adequate public facilities, transportation facilities, and infrastructure. The County desires the assemblage of small, adjacent under-utilized sites to achieve a consistent and compatible development pattern.
 3. Infill projects that propose substantially different uses from one or more of the adjoining properties will provide for an adequate transition through buffering, fencing, and setbacks to mitigate any negative impact.
 4. The Zoning Ordinance will promote the development of interim uses on vacant infill properties (i.e., which are initially interim but may become permanent such as community gardens, playgrounds, park-and-ride lots, and farmer's markets), provided that these uses are compatible with the surrounding neighborhood.
 5. The County will ensure that new development projects provide inter-parcel vehicular and pedestrian access opportunities to adjacent vacant parcels so that future infill projects may be efficiently connected and served.
 6. The County will work actively with residential development applicants to facilitate the integration of proposed homeowner's associations (HOAs) into an adjoining HOA to maintain economies of scale and to augment the availability of amenities.
 7. Higher density development as defined in the Revised General Plan will occur as redevelopment in

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the Suburban Policy Area in the Transit-Oriented Development, Urban Center, and in the Town Centers, or "community cores", of the four communities. These areas will have the highest densities in the Suburban Policy Area. The Town Centers will be identified during the Community Plan process.

8. The four Community Plans will identify the needs of each specific community such as where and what type of traffic calming is needed, and target specific areas for revitalization and redevelopment.
9. Redevelopment and revitalization plans will include the recapture of the Green Infrastructure through methods such as the PDR program; the strategic purchase of infill sites for parks, athletic fields, and open space; and assisting homeowners' associations to purchase open space.
10. To provide for the sensitive redevelopment of existing areas to new uses, the County desires that small lots and tracts be consolidated into larger parcels that can support a more comprehensive design and servicing approach.
11. The County will direct public investment and resources and give priority to the redevelopment and enhancement of existing infrastructure, capital facilities, and services. The County also will implement an incentive program for redevelopment of the above.
12. The County will provide incentives and resources for the redevelopment and revitalization of developed areas within the four communities to retrofit neighborhoods to be pedestrian/bicycle oriented; to institute traffic calming, street lighting, and sidewalks; and to convert inefficient retail and commercial development.
13. The County will direct public investment and resources toward completing and recapturing the Green Infrastructure in the developed areas of the four communities and providing alternative transportation modes within the four communities.

Land Use Categories

The Suburban Policy Area has four primary land uses: Residential, Business, Industrial, and Retail (see Planned Land Use Map, pg. 7-23). Retail policies are established in the *Countywide Retail Policy Plan* amendment. Within these primary land uses are subcategories. The County's

overall land-development strategy is to encourage compact, mixed-use developments that provide people with the opportunity to live, work, recreate, and shop in a pedestrian-friendly environment. The exceptions are for Keynote Employment areas, General Industrial areas, and Business land use areas within the Route 28 Tax District where residential uses are not allowed. Because much of the Suburban Policy Area is already developed, this Plan envisions that new projects will be modest in scope and therefore will be evaluated based on their compatibility with the larger community of which they will be a part. The land use categories and policies guiding their development are described below and summarized in the matrix on pg. 6-33.

A. Residential

Residential land uses include Residential Neighborhoods and High-Density Residential uses. Town Centers, the key commercial component of the four Suburban Communities, also are detailed in this section. Housing is the principal function in Residential Neighborhoods, but business and light/flex industrial uses also are permitted to provide support services and local employment opportunities to residents. The mix of uses at the core of larger Residential Neighborhoods should include retail and personal services, public and civic uses, and elements of the Green Infrastructure. Smaller neighborhoods will focus on a public green or park, civic buildings such as a church or community center, or a small neighborhood commercial center.



A mix of housing types and lot sizes provide options for a range of lifestyles and incomes.

Residential design features must include efficient and compact site and roadway layout with adequate open space (active, passive, and natural), streetscapes that include sidewalks, street trees, pedestrian-scale lighting, pedestrian and roadway linkages to other neighborhoods and communities, and the full protection and incorporation of the Green Infrastructure. Such neighborhoods will

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3. The land use mix (measured as a percentage of the project land area) in a High-Density Residential area generally will comply with the following ratios:

Land Use Category*	Minimum Required	Maximum Permitted
a. High Density Residential	40%	60%
b. Office, Light Industrial	0%	20%
c. Public & Civic	10%	no maximum
d. Public Parks & Open Space	50%	no maximum

*Retail Policy guidance provided in *Countywide Retail Plan*

4. High-Density Residential policies will be updated by Community Plan policies.

3. Town Centers

The Plan envisions that each of the four larger communities will have one Town Center. Town Centers serve as the "downtown" or community core of the four suburban communities. Town Centers must be compact and designed to accommodate pedestrian and vehicular traffic with a full complement of services and amenities. Even though the potential exists to develop the Town Center and associated neighborhoods in phases, an overall concept plan should be developed so the interrelationship of its parts (residential, commercial, office, civic, public open space, and transportation network) can be evaluated. A key element of the Town Center's design is its emphasis on pedestrian movement versus automobile movement, through the use of a grid street pattern and pedestrian-scale shops. Town Center development also should include a provision for transit facilities or stops.

Town Center Policies

1. A Town Center functions as the "downtown" of each community with a mix of residential and business uses in a compact setting. Each of the four communities will have a Town Center, the location of which will be determined in the Community Plan process.
2. The Town Center will provide for a mix of land uses including dwellings, commercial and office uses, personal and household service establishments, institutional uses, public facilities, parks, playgrounds and other similar uses meeting the needs of the adjoining neighborhoods.

3. The Town Center will range in size between 30 and 60 acres.

4. The land use mix (measured as a percentage of the land area) in a Town Center generally will comply with the following ratios:

Land Use Category	Minimum Required	Maximum Permitted
a. High Density Residential	25%	40%
b. Commercial Retail & Services*	20%	45%
c. Regional Office	10%	25%
d. Overall Business Uses (b & c combined)	30%	50%
e. Public & Civic	10%	no maximum
f. Public Parks & Open Space	10%	no maximum

* Retail Policy guidance provided in *Countywide Retail Plan*

5. Housing densities from 8.0 to 16.0 dwelling units per acre will be permitted in a Town Center, contingent upon the availability of utilities, roads, and public facilities and in conformance with the community design and growth management policies of this Plan. The Residential component will be subject to the design guidelines outlined in the Residential policies.

6. Business floor-area ratios will be sufficient to permit maximum use of small lots and the development of structures that support ground-floor shops and upper-level residential and office uses.

7. An overall concept development plan will be required in sufficient detail to allow evaluation of the interrelationship of the Town Center's parts (residential, commercial, office, civic, public open space, road network design, and other components).

8. Approval of a request to rezone property to permit a Town Center will be contingent on the provision of a full complement of public facilities and services, the adequacy of roads and utilities, limited impact on existing neighborhoods, and compliance of the proposal with the community-design policies and guidelines of this Plan.

(Slip Opinion)

OCTOBER TERM, 2004

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Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

KELO ET AL. v. CITY OF NEW LONDON ET AL.

CERTIORARI TO THE SUPREME COURT OF CONNECTICUT

No. 04–108. Argued February 22, 2005—Decided June 23, 2005

After approving an integrated development plan designed to revitalize its ailing economy, respondent city, through its development agent, purchased most of the property earmarked for the project from willing sellers, but initiated condemnation proceedings when petitioners, the owners of the rest of the property, refused to sell. Petitioners brought this state-court action claiming, *inter alia*, that the taking of their properties would violate the “public use” restriction in the Fifth Amendment’s Takings Clause. The trial court granted a permanent restraining order prohibiting the taking of the some of the properties, but denying relief as to others. Relying on cases such as *Hawaii Housing Authority v. Midkiff*, 467 U. S. 229, and *Berman v. Parker*, 348 U. S. 26, the Connecticut Supreme Court affirmed in part and reversed in part, upholding all of the proposed takings.

Held. The city’s proposed disposition of petitioners’ property qualifies as a “public use” within the meaning of the Takings Clause. Pp. 6–20.

(a) Though the city could not take petitioners’ land simply to confer a private benefit on a particular private party, see, e.g., *Midkiff*, 467 U. S., at 245, the takings at issue here would be executed pursuant to a carefully considered development plan, which was not adopted “to benefit a particular class of identifiable individuals,” *ibid.* Moreover, while the city is not planning to open the condemned land—at least not in its entirety—to use by the general public, this “Court long ago rejected any literal requirement that condemned property be put into use for the . . . public.” *Id.*, at 244. Rather, it has embraced the broader and more natural interpretation of public use as “public purpose.” See, e.g., *Fallbrook Irrigation Dist. v. Bradley*, 164 U. S. 112, 158–164. Without exception, the Court has defined that concept broadly, reflecting its longstanding policy of deference to legislative judgments as to what public needs justify the use of the takings

Syllabus

power. *Berman*, 348 U. S. 26; *Midkiff*, 467 U. S. 229; *Hickelshaus v. Monsanto Co.*, 467 U. S. 986. Pp. 6-13.

(b) The city's determination that the area at issue was sufficiently distressed to justify a program of economic rejuvenation is entitled to deference. The city has carefully formulated a development plan that it believes will provide appreciable benefits to the community, including, but not limited to, new jobs and increased tax revenue. As with other exercises in urban planning and development, the city is trying to coordinate a variety of commercial, residential, and recreational land uses, with the hope that they will form a whole greater than the sum of its parts. To effectuate this plan, the city has invoked a state statute that specifically authorizes the use of eminent domain to promote economic development. Given the plan's comprehensive character, the thorough deliberation that preceded its adoption, and the limited scope of this Court's review in such cases, it is appropriate here, as it was in *Berman*, to resolve the challenges of the individual owners, not on a piecemeal basis, but rather in light of the entire plan. Because that plan unquestionably serves a public purpose, the takings challenged here satisfy the Fifth Amendment. P. 18.

(c) Petitioners' proposal that the Court adopt a new bright-line rule that economic development does not qualify as a public use is supported by neither precedent nor logic. Promoting economic development is a traditional and long accepted governmental function, and there is no principled way of distinguishing it from the other public purposes the Court has recognized. See, e.g., *Berman*, 348 U. S., at 24. Also rejected is petitioners' argument that for takings of this kind the Court should require a "reasonable certainty" that the expected public benefits will actually accrue. Such a rule would represent an even greater departure from the Court's precedent. E.g., *Midkiff*, 467 U. S., at 242. The disadvantages of a heightened form of review are especially pronounced in this type of case, where orderly implementation of a comprehensive plan requires all interested parties' legal rights to be established before new construction can commence. The Court declines to second-guess the wisdom of the means the city has selected to effectuate its plan. *Berman*, 348 U. S., at 26. Pp. 13-20.

268 Conn. 1, 843 A. 2d 500, affirmed.

STEVENS, J., delivered the opinion of the Court, in which KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. KENNEDY, J., filed a concurring opinion. O'CONNOR, J., filed a dissenting opinion, in which REHNQUIST, C. J., and SCALIA and THOMAS, JJ., joined. THOMAS, J., filed a dissenting opinion.